

Independent
Television

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 2, 1993

Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: MM Docket No. 92-259, Implementation of Cable Act

Dear Madam Secretary:

Today we met with Chairman James H. Quello and Robert Corn-Revere regarding the above referenced docket. We discussed our comments in this proceeding and summarized our major points. We also discussed the carriage situation in Connecticut. A copy of the material submitted to the Chairman and his staff are enclosed.

Sincerely,

A handwritten signature in cursive script, reading "David L. Donovan".

David L. Donovan

Enc.

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SYNDEX AND NETWORK NON-DUPLICATION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

1. Congress did not intend for the FCC to overhaul its syndex and network non-duplication rules. Statute assumes these rules remain in place.
 - Section 614(b)(3)(B) states: "The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect of January 1, 1991), or any successor regulations thereto."
 - Senate stated: "In that connection, the committee has relied on the protections which are afforded local stations by the FCC's network non-duplication and syndicated exclusivity rules. Amendments or deletions of these rules in a manner which would allow distant stations to be submitted on cable systems for carriage or local stations carrying the same programming would, in the Committee's view, be inconsistent with the regulatory structure created by S. 12." (Senate Report at 38.)
2. Syndex and network non-duplication govern the exclusivity arrangements among broadcast stations. There is no justification for eliminating these rights in this proceeding. These rights arise out of contractual arrangements, and the rights are not conditioned on whether a station becomes a must-carry or retransmission consent station.
 - Eliminating non-duplication protection for stations that are not carried on a cable system seriously undermines station's ability to negotiate for retransmission consent.
3. Extent of problem is grossly exaggerated.
 - Network stations: Relatively few situations where two network affiliates are in the same ADI. Issue may also involve adjacent ADIs.
 - The dominant network affiliate may have achieved "significant viewing status" in the community negating the other affiliate's non-duplication rights.
 - Statute does not require carriage of duplicating network signals. Cable system has obligation to carry the closest affiliate.
 - Waivers to definition of a market will solve remaining problems.
 - Syndex: Rarely is syndicated product sold to two stations in the same ADI. Waivers to market definition will solve most of the problems.

TELEVISION MARKET (ADI)

1. A full powered television station may assert must-carry rights on any cable systems where the community served by the cable system is located in the station's ADI.
 - Section 614 (h)(1)(C). Establishes ADI as the definition of local market.
 - Mileage standard rejected. House Report found "The Committee believes that ADI lines are the most widely accepted definition of a television market and more accurately delineate the area in which a station provides local service than any arbitrary mileage-based definition." (House Report at 97.) Senate bill, S.12, was originally based on a 50 mile zone. This was amended on Senate floor. Mileage standard expressly rejected.
2. Location of principal "head end" or technical integration of cable system is irrelevant.
 - No statutory basis for using location of principal "head end" as basis for determining a station's market. Congress established an ADI standard for commercial stations.
 - Continental argues against location of "head end" approach. (Continental comments at 6.)
 - Location of "head end" creates unstable must-carry rules. Every time there is a consolidation of "head ends," must-carry rules change.
 - Cable systems overlapping ADI boundaries, or technically integrated systems do not justify changing statutory requirements. Comments do not document extent of problem. No cost data are supplied. Remember the siren's song of syndex costs.
 - Cable comments admit that cable systems are able to carry different broadcast signals on different portions of integrated system. (Comments of CR&B at 5 n.3)
 - Television receive sites may be different from "head end" location. (Comments of CR&B at 5 n.4)

(OVER)

- Despite technical integration, cable argues for rate regulation based on communities. It does not want uniform rate regulation based on technically integrated "head ends." (Continental Comments in 92-266 at 60-62.)
 - Congressional plan is based on where "communities" are located. Remedy is provided via petitions, not a general rule.
3. Modifications to ADI market definition are exceptions, not the rule. Changes to ADI carriage based on petitions from stations or cable operators.
- FCC can decide that community exists in two separate television markets.
 - Statute does not give cable operator discretion to unilaterally select which market its system is in. Statute gives FCC sole discretion to make these determinations.
 - Waiver criteria cannot be "used by cable systems to manipulate their carriage obligations to avoid compliance with objectives" of the Act. (House Report at 98.)
 - Waiver criteria not intended to permit cable systems to discriminate among several stations licensed to the same community. (House Report at 98.)
 - In considering waivers, the FCC must consider various factors, such as 1) historical carriage patterns, 2) coverage or local service, 3) whether any other station is serving the community and 4) viewing patterns in cable and non cable households.
 - Viewing patterns not based on "significantly viewed" status. Statute rejected "significant viewing" test. Approach hurts new stations entering the market.

CHANNEL POSITIONING

1. Channel positioning requirements are prescriptive, cable has no discretion, choice of channel position sole right of television station.
 - Section 614(b)6 states: "Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station of broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator."
 - Legislative history demonstrates cable systems have no discretion regarding channel placement. Conference agreement described S. 12's channel positioning provisions: "Subsection (b)6 governs the cable system channel position on which signals carried pursuant to this section must be placed." (Conference Report at 67.) Same language is used to describe House bill H.R. 4850. (Id. at 72.)
2. Artificial Limits created by "trapping" basic tier to a specific number of channels (e.g. 2-12) does not alter broadcasters right to channel positions.
 - No basis in statute or legislative history. Technical constraints relevant only to anti-buy through provisions. (Conference Report at 64.)
 - FCC interpretation completely undermines channel positioning requirements.
 - Cable could place basic tier in cable "Siberia," channels 90 - 100.
 - Cable could trap out only a 6 channel basic tier, leaving others stranded.
 - What happens in large markets where there are more than 10 must-carry stations and system capacity is large. Can cable ignore channel positioning requirements of any station once it fills up channels 2-12.
 - Comments do not document costs or extent of the problem.

(OVER)

3. Statute provides remedy.
 - Fourth channel option, provides for positioning based on "mutual agreement." This agreement process is independent of the retransmission consent process.
 - No evidence that stations would be unreasonable. Stations most likely would agree to move to channels 2-12. No station would insist on channel where there is technical interference.
4. Channel positions of must-carry stations take precedence over channel position requests of retransmission consent stations.
 - Section 325(b)(5) states: "The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section."
5. FCC need not adopt a priority scheme to resolve channel positioning disputes.
 - Extent of potential problem is never documented in comments.
 - Most channels shifts involved replacing local television station with cable program channel. No conflict will occur.
 - Nothing in statute gives non-commercial stations priority over commercial stations.
6. Statute prohibits giving cable operators discretion to resolve channel positioning or must-carry disputes.
 - Section 614(d)(1)-(3) requires the FCC to resolve channels positioning and must-carry disputes.
 - Enacting procedural burdens, or giving cable operators the ability to make initial determinations is inconsistent with the statute.
7. Channel positions of must-carry stations take precedence over franchise requirements and private contracts.
 - Federal signal carriage requirements always preempt local franchises.
 - Federal law governs contracts; law is not retroactive.

Cablevision 10/10/93 SW 41

CABLEVISION CREATES THE CONNECTICUT CHANNEL



Subscribers agree that one of the most important services cable television can provide is timely and informative community programming.

Extensive research and discussion showed that the majority of

subscribers believed that duplication of programming on area broadcast stations was unnecessary. At the same time, they believe strongly in the local news, sports and public affairs programming these stations provide.

Cablevision has responded with the creation of The Connecticut Channel, a 24-hour service dedicat-

ed to providing the best selected news, public affairs and local sports programming from off-air broadcast stations.

On April 1, 1993, WFSB, WTXN, WVIT and WTIC will be discontinued, but Cablevision will continue

to provide selected news, sports and public affairs shows from WFSB, WVIT and WTIC on The Connecticut Channel.

"The Connecticut Channel is a perfect example of how cable television can respond to the needs of the communities it serves," said Cablevision Director of Public Affairs Donna

Garofano. "Subscribers will continue to receive the local news and information our subscribers depend on."

Subscribers Prefer New York Network Affiliates

A large percentage of subscribers prefer the New York network affiliates to the Connecticut affiliates.

survey conducted 1/8/93



(From top): Sports, news and weather on The Connecticut Channel.



See The
Connecticut Channel
On Channel 3

COPYRIGHT ISSUES

1. Congress understood that stations asserting must-carry rights may be considered distant signals under the Copyright Act. Obligation of station is to "indemnify" cable operator.
 - Section 614(h)(1)(B)(ii) reads: "a television broadcast station that would be considered a distant signal under Section 11 of title 17, United States Code, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system.
 - The obligation is an agreement to indemnify. Indemnification involves the "reimbursement" for a loss. There is no requirement to make payment to cable systems in advance.
 - Commission should indicate it will not tolerate cable systems arbitrarily assigning highest rate to local stations.
2. Modification of 76.51 hyphenated market lists.
 - Statute requires list to be updated. FCC should create a list encompassing all ADIs.
 - Without changing the definition of "local" for copyright purposes, FCC could create a presumption that stations are significantly viewed in all major communities located in each ADI county.
 - Parties objecting would have to demonstrate otherwise.
 - Benefits cable operators by reducing distant signal payments.
 - Corrects marketplace distortion; most independent stations did not exist at the time the FCC's significantly viewed list was created. Overcomes difficulty in estimating off-air viewing where cable penetration is high.
 - Existing carriage arrangements should be grandfathered. Copyright liability under old market rankings, as affecting distant signal quotas, should be grandfathered.

- ① ~~July 1~~ Mustang election July 6
② Mustang July 21
-

By Community:
Locate LADI

Chen Punting
↳ Boards of Proof

Compelling Signal security problem

Signalize — can't connect syndex &
Network network in overlapping
market

Exclusive Retn

~~STP~~ Retn Cont agent more elect Mustang

SUBSTANTIAL DUPLICATION

1. Section 614(b)(5) states that "...a cable operator shall not be required to carry the signal of any local commercial television stations that substantially duplicates the signal of another local commercial television station...or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network...."
2. For the provision to apply, both stations must be "local," i.e. within the same television market. A cable system may not carry an out of market station and drop the local station.
3. Substantial duplication is specifically defined:
 - "The term 'substantially' duplicates is intended to refer to the simultaneous transmission of identical programming on two stations, which are each eligible to assert signal carriage protection under this section, and which constitutes a majority of programming of each station." (House Report at 94.)
 - Definition is specific to the simultaneous transmission of a majority of programming (greater than 50%). No legislative support for looking at programming on a weekly basis.
 - FCC should base standard on the broadcast day 6 a.m. - 12 p.m. Legislative history does not support limiting the standard to "prime time" programming.

GOOD QUALITY SIGNAL

- 1. Section 614(h)(1)(B)(iii) requires a television station to deliver a signal level of -45dBm (UHF) and -49dBm (VHF) to the principal head end of a cable system.**
 - **The statute defines good quality signal in terms of the above mentioned signal strengths.**
 - **No other qualitative definition is provided. Using any other measure creates potential for abuse and undermines the statute.**
- 2. Signal levels need not be provided by "over-the-air" transmission. Statute provides for "baseband" video signal which may be delivered by microwave or other means of transmission.**
- 3. A station may use a translator to provide signal strength to cable head end, thereby qualifying it for must-carry rights in its defined market. Where a translator is used to provide the specified signal strength, the cable operator need not carry the primary station. However, the original station still may assert its channel positioning and carriage rights. The decision to use a translator to provide adequate signal strength is up to the television station's discretion.**

RETRANSMISSION CONSENT

- 1. Congress created a new, inalienable right, independent of copyright. Retransmission consent relates to right in the signal.**
 - **The Senate found: "The Committee is careful to distinguish between the authority granted broadcasters under the new section 325(b)(1) of the 1934 Act to consent or withhold consent from the retransmission of the broadcast signal, and the interests of copyright holders in the programming contained in the signal." (Senate Report at 36.)**
 - **Both cable operators and television stations agree that local television stations have the sole authority to negotiate for retransmission consent.**
 - **Permitting program contracts to control retransmission rights will effectively destroy retransmission consent.**
 - **Retransmission right belongs to the station. Networks may not force local stations to assert or reject retransmission consent rights as a condition of affiliation or compensation arrangement.**
- 2. Retransmission consent negotiations are for the "entire" signal, not a program by program basis.**
 - **Section 614(b)(3)B) requires a cable operator to carry the entire program schedule of any television station carried by the system. This requirement is not limited to stations carried in fulfillment of must-carry requirements.**
 - **Local retransmission consent stations may be used to meet the local carriage requirement. To qualify the entire signal must be carried.**
- 3. Local stations which opt for must-carry, but are not carried because a cable operator has fulfilled its carriage requirements, may assert retransmission consent.**
- 4. Retransmission consent applies to cable systems outside the television station's local market. Statute limits superstations delivered by satellite carrier as of May 1, 1991.**

CABLEVISION PACKAGES

SHOWTIME
THE MOVIE CHANNEL
CINEMAX
HBO
SPORTSCHANNEL
MADISON SQUARE
GARDEN NETWORK
THE DISNEY CHANNEL
BRAVO
AMERICAN MOVIE CLASSICS
FLUX
PPV Availability
Remote Volume & TCP
Includes Basic Cable and Family Cable

◀ RAINBOW GOLD

Add any one to Rainbow
SHOWTIME
THE MOVIE CHANNEL
CINEMAX
OR
THE PLAYBOY CHANNEL
Includes Basic Cable and Family Cable

◀ RAINBOW PLUS ONE

HBO
SPORTSCHANNEL
MADISON SQUARE
GARDEN NETWORK
THE DISNEY CHANNEL
BRAVO
AMERICAN MOVIE CLASSICS
FLUX
Remote Control Channel Selector
PPV Availability
Includes Basic Cable and Family Cable

◀ RAINBOW

FAMILY CABLE

LIFETIME
COURT TV
CNBC
CNN
QVC
C-SPAN II
SWAP 'N' SHOP

USA NETWORK
ESPN
NJT
NEWS 12
EWTN
TBS
TNT
NICKELODEON
COMEDY CENTRAL

THE FAMILY CHANNEL
THE SILENT NETWORK
MTV: MUSIC TELEVISION
CARTOON NETWORK
VH-1: VIDEO HITS ONE
COUNTRY MUSIC TV
THE NASHVILLE NETWORK
ARTS & ENTERTAINMENT
THE DISCOVERY CHANNEL

BLACK ENTERTAINMENT TELEVISION
MIND EXTENSION UNIVERSITY
THE LEARNING CHANNEL
HOME SHOPPING NETWORK
THE WEATHER CHANNEL
SPORTSCHANNEL AMERICA
E! ENTERTAINMENT TELEVISION
INTERNATIONAL CHANNEL
SCI-FI CHANNEL
PPV AVAILABILITY

Includes Basic Cable

All package prices are cumulative and include a subscription to Family Cable.

BASIC CABLE

WCBS
WNBC

WNYW
WABC

WWOR
WEDW
WPIX
WNET

WNYE
WNYC
WNJU
WLJW

WXTV
C-SPAN (part time)
PUBLIC ACCESS
GOVERNMENT ACCESS

EDUCATIONAL ACCESS
THE CONNECTICUT CHANNEL

CABLEVISION

Connecticut—Hartford

WTIC-TV

Ch. 61

Network Service: Fox.

Licensee: Channel 61 Licensee Corp., One Corporate Center, Hartford, CT 06103.

Studio: One Corporate Center, Hartford, CT 06103.

Telephone: 203-527-6161. Fax: 203-293-1571.

Technical Facilities: Channel No. 61 (752-758 MHz). Authorized power: 5000-kw max. visual, 1000-kw max. aural. Antenna: 1692-ft. above av. terrain, 1339-ft. above ground, 2049-ft. above sea level.

Latitude 41° 42' 13"
Longitude 72° 49' 57"

Transmitter: Rattlesnake Mountain, near Rte. 6, Farmington, CT.

Multichannel TV Sound: Stereo and separate audio program.

Satellite Earth Stations: Scientific-Atlanta, 7-meter C-band; Scientific-Atlanta, 6.1-meter Ku & C-band; Microdyne, 5-meter C-band; Microdyne, 2.8-meter Ku-band.

News Services: AP, CNN, Fox News.

Ownership: Chase Communications Inc. (Group Owner).

Began Operation: September 17, 1984.

Represented (sales): Settel Inc.

Represented (legal): Schnader, Harrison, Segal & Lewis.

Represented (engineering): Andrus & Associates Inc.

Personnel:

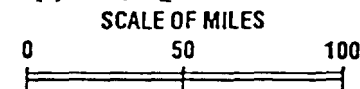
Edward T. Karlik, President.
Robert D. Gluck, Vice President & General Manager.
Richard Stein, General Sales Manager.
Kathryn Bridgman, National Sales Manager.
Coleen Marren, News Director.
Holland McDaniel, Promotion Director.
Louis Spitzer, Business Manager.
Jim Perry, Chief Engineer.
Larry Delia, Local Sales Manager.
Gene Gruenberg, Local Sales Manager.
Dean Baldwin, Production Manager.

Rates: On request.

City of License: Hartford. ADI: Hartford-New Haven. Rank: 24.

Total Households: ©MSI Consumer Market Data as of 1/1/92. TV Homes, TV% and Circulation ©1992 Arbitron. County coverage based on Arbitron study.

Net Weekly Circulation	State County	Total Households	TV Households	%
50% & Over	CONNECTICUT			
	Hartford	327,600	323,000	99
	Litchfield	66,600	65,500	98
	Middlesex	55,900	55,000	98
	New London	93,700	91,900	98
	Tolland	44,800	44,100	98



WTIC-TV BMPCT-840106KE Granted 9/26/84 © American Map Corp., No. 14244

Net Weekly Circulation	State County	Total Households	TV Households	%
50% & Over	MASSACHUSETTS			
	Hampden	172,600	170,300	99
	Hampshire	50,200	49,200	98
Between 25-49%	CONNECTICUT			
	New Haven	305,500	301,800	99
	Windham	38,100	37,400	98
	MASSACHUSETTS			
	Franklin	28,200	27,400	97
Between 5-24%	CONNECTICUT			
	Fairfield	303,000	299,800	99
	MASSACHUSETTS			
	Berkshire	54,800	53,900	98
	NEW YORK			
	Putnam	29,100	28,700	99
Station Totals		1,570,100	1,548,000	99
Net Weekly Circulation (1992)			745,000	
Average Daily Circulation (1992)			309,900	

**NEED BROADCAST TV OR CABLE TV DATA
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NEED CUSTOMIZED REPORTS?**

Call Warren Publishing's
Market Research & Data Sales Dept.

202-872-8200



Mr. Robert Gluck
General Manager
WTIC/Channel 61
One Corporate Center
Hartford, Connecticut 06103

February 12, 1993

Dear Mr. Gluck:

Both our Cablevision of Connecticut and Cablevision of Southern Connecticut systems have carried WTIC/Channel 61 from Hartford, as well as WNYW/Channel 5 from New York, for many years. Channel capacity limitations in both systems have made the launch of any new product very difficult, if not impossible, for some time. We have, therefore, re-evaluated all the programming we carry, in an effort to reduce duplication and open up channels for new, unduplicative product.

As a result of program schedule duplication studies and subscriber research, we have made some decisions, about which I would like to inform you, as follows:

Effective March 31, 1993, the Cablevision of Connecticut system, which serves the ten communities of Greenwich, Stamford, New Canaan, Darien, Norwalk, Wilton, Weston, Easton, Redding and Westport, will drop WTIC/Channel 61 from its lineup. Effective April 1, 1993, the Cablevision of Southern Connecticut system, which serves the six communities of Fairfield, Bridgeport, ~~Stamford~~, Stratford, ~~Orange~~ and ~~Woodbridge~~, will also drop WTIC/Channel 61 from its line-up. Both systems will continue to carry WNYW/Channel 5.

Channel 3 on the both the Cablevision of Connecticut and Cablevision of Southern Connecticut systems will become a composite channel which will feature largely unduplicated programming from several broadcast stations, including WTIC/Channel 61. We are working now to prepare a schedule for this composite channel. We would appreciate receiving a copy of your April, 1993 program schedule as soon as it becomes available, so that we may evaluate your programming schedule to make certain that we are featuring as much unduplicated product as feasible.

All of our subscribers will have been notified of these changes by February 15, 1993, as will appropriate regulatory agencies. Please contact me if you have any questions.

Sincerely,

Irene Tripodi
General Manager
Cablevision of Connecticut
and Southern Connecticut

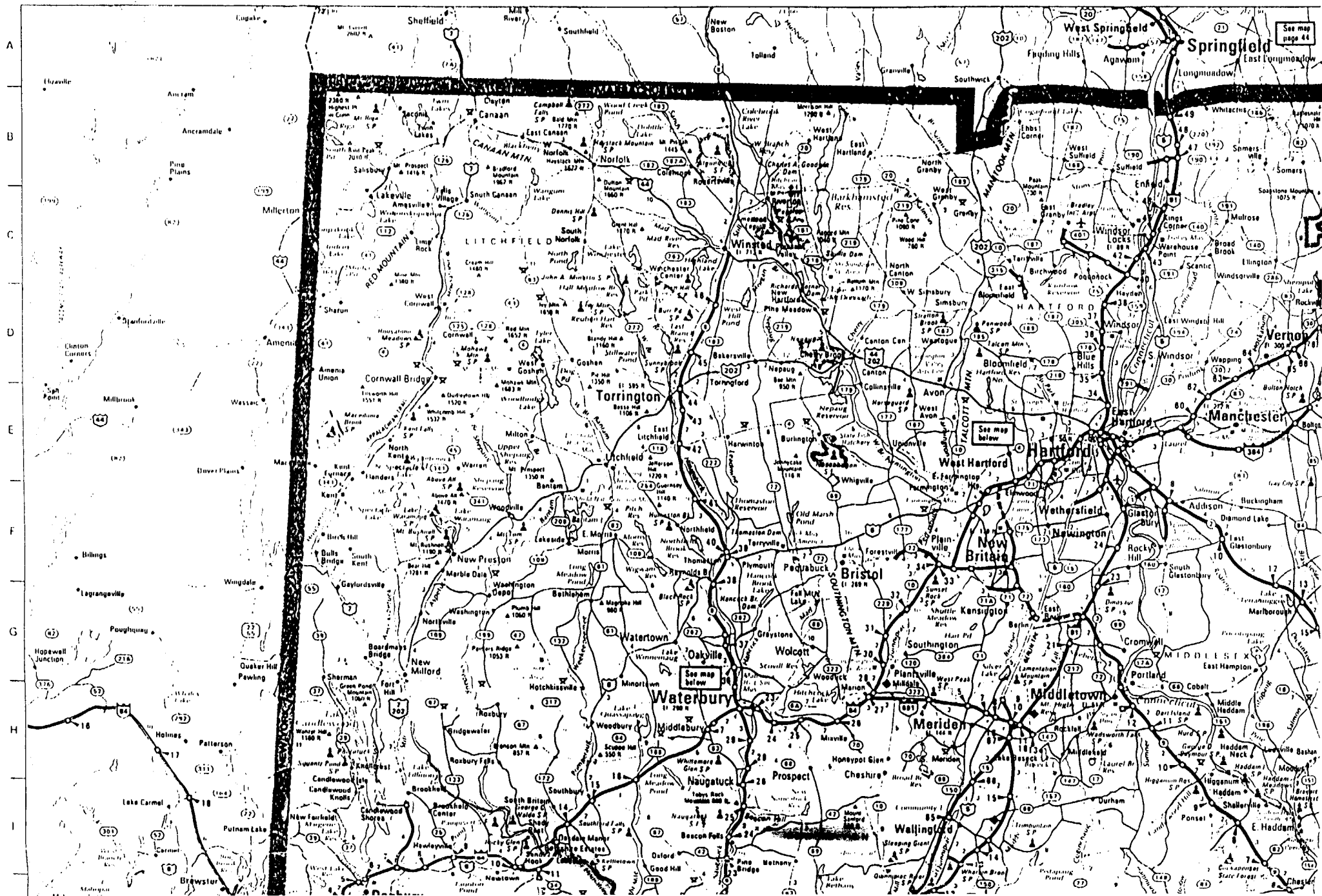
IT:bzd

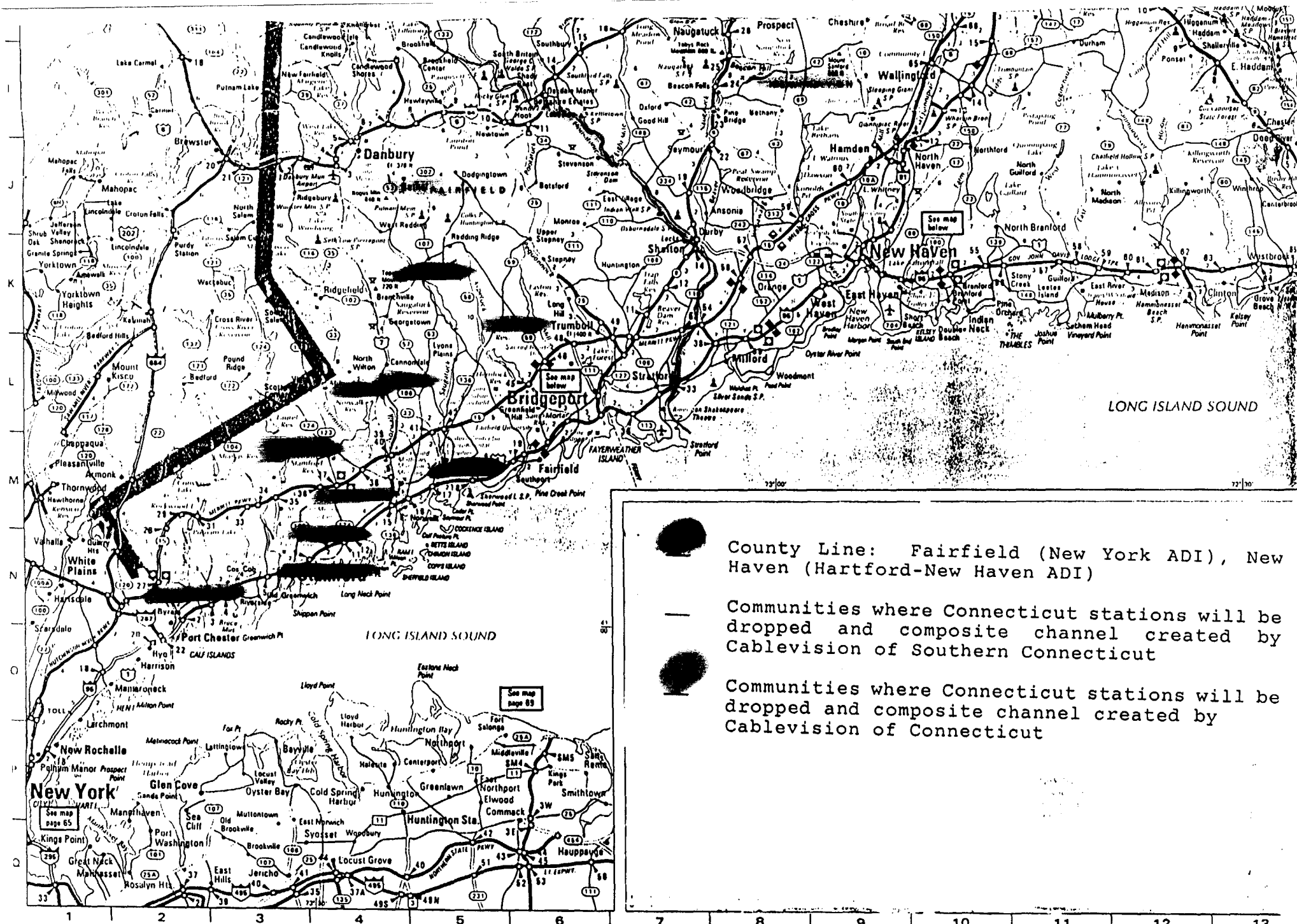
	Bridgport CT	Bristol CT	Canaan CT	Clinton CT	Danbury CT	Fall River MA	Hartford CT	Kington RI	Middlebury CT	New Haven CT	New London CT	Newport RI	New York NY	Providence RI	Springfield CT	Stamford CT	Torrington CT	Vernon CT	Waterbury CT	Westerly RI	Windsor Locks CT	Woonsocket RI					
Bridgport CT	153																										
Bristol CT	107	100	19	42	53	59	92	78	71	15	47	47	99	119	38	74	49	29	78	27	11	84	37	65	27	11	84
Canaan CT	135	20	41	73	23	33	122	42	84	25	31	53	115	77	59	110	93	67	47	48	52	103	28	69	56	53	125
Clinton CT	51	129	98	116	87	144	15	74	34	87	78	110	54	35	103	48	30	82	147	104	69	11	102	53	68	88	14
Danbury CT	130	37	14	43	52	29	122	37	105	16	26	28	77	112	83	60	102	78	56	55	19	45	104	97	54	45	104

Selected Recreational & Historical Sites

The Breakers (RI), H 24
 Burlingame State Park (RI), J 20
 Dimock State Park (CT), G 11
 First Baptist Church in America (RI), N 25
 Fort Adams State Park (RI), H 24
 Gilbert Stuart's Birthplace (RI), H 23
 Gillette Castle (CT), I 14
 Litchfield Historic District (CT), E 6

Mark Twain House (CT), O 16
 Mystic Maritime Aquarium (CT), J 18
 Mystic Seaport (CT), J 18
 New Gate Prison (CT), C 11
 Slater Mill Historic Site (RI), M 25
 Innis Hall of Fame (RI), H 24
 Touro Synagogue Nat'l Historic Site (RI), H 24
 Valley Railroad (CT), J 14





County Line: Fairfield (New York ADI), New Haven (Hartford-New Haven ADI)

Communities where Connecticut stations will be dropped and composite channel created by Cablevision of Southern Connecticut

Communities where Connecticut stations will be dropped and composite channel created by Cablevision of Connecticut